

AG Contract No KR99-2699TRN
ADOT ECS File No. JPA 99-182
TRACS No.: H4527 03C and H4527 03D
Section: Price Freeway, (101L)
Warner Road - Frye Road

AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
SAN TAN OFFICE VENTURE, L.L.C.

THIS AGREEMENT is entered into 30 November, 1999, pursuant to the Arizona Revised Statutes, Section 28-401, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and SAN TAN OFFICE VENTURE, L.L.C. (the "Developer").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-408 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Developer is empowered to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Developer.

3. The Developer is developing a commercial facility, designed with one of its primary access points (located at Ray Road) within the limits of the State's project located in the vicinity of the Price Freeway and Ray Road, and desires to provide all necessary design, and fund all costs associated with construction of proposed access improvements to the commercial facility, herein referred to as the "Project"

4. The Developer requests the State incorporate said design, by change order to its existing construction contract of the Price Freeway at Ray Road. Upon the State's review and concurrence of the proposed changes, the Developer desires to fund the construction of the Project. Nothing herein shall be construed to impose an obligation on the State in any way fund the Project.

5. Developer has assured the State that Developer has the ability and will continue to have the ability to provide the funds necessary to complete the Project.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The Developer will:

a. Upon execution of this agreement and receipt of invoice, deposit \$50,000.00, (150% of the estimated cost), with the State Department of Transportation for the benefit of the Arizona Department of Transportation, (Project H4527 03C and H4527 03D), for 150% of the estimated costs of the Project, including but not limited to preparation, review of plans, construction and construction engineering (CE) of proposed Project, by the State.

b. Prepare to State standards, improvement plans including designs, quantities and other documentation required by the State in connection with the proposed Project.

c. Be responsible for all State's costs associated with the Project, including but not limited to State's preparation of improvement plans for driveway entrance and light pole relocation, reviews, construction and CE of the Project. If after the State has notified the Developer of any increase in the estimated cost of the Project and the Developer cancels said Project, the Developer will be responsible for all costs associated with the Project up to cancellation.

d. Upon completion and final acceptance of the Project by the State, be responsible for all costs in excess of \$50,000.00. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the Developer.

e. Upon completion of the Project, be responsible for maintenance of the Project.

2. The State will:

a. Upon execution of this agreement, invoice the developer \$50,000.00 for 150% of the estimated costs of the Project (H4527 03C and H4527 03D), including but not limited to preparation, review of plans, construction and construction engineering (CE) of proposed Project, by the State.

b. Review all design documents in connection with the proposed Project and provide timely written comments to Developer. The State will notify the Developer of any material increase in the estimated cost of the Project and the Developer may cancel the Project prior to award of the Project.

c. By change order to the State's ongoing construction of the Price Freeway, construct the proposed Project on behalf of the Developer between December 1999 and June 2000.

d. Upon completion of the Project, conduct and provide the Developer with a final accounting of the Project (assisted by the Project Manager and/or the Resident Engineer) and either invoice for the amount due the State in excess of \$50,000.00 or return all unused funds to Developer.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The Developer assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Developer and that the Developer hereby agrees to save and hold harmless and indemnify from loss the State, any of its

departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Developer, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. This Agreement shall remain in full force and effect until final payment from the Developer and acceptance of the Project by the State

3. Should Developer fail to fulfill the obligations set forth in this Agreement or withdraw its proposed plans for whatever reason, Developer shall be responsible for all costs incurred by the State up to the time of withdrawal, unless the reason for Developer's failure or cancellation is due to the State's failure to comply with its obligations thereunder.

4. It is agreed between the parties hereto that Developer will pay all costs of whatever nature and the State will not incur or bear any costs whatsoever related to the Project.

5. This Agreement shall become effective upon signature of the parties hereto.

6. This Agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

7. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this Agreement.

8. In the event of any controversy which may arise out of this Agreement, the parties hereto agreed to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

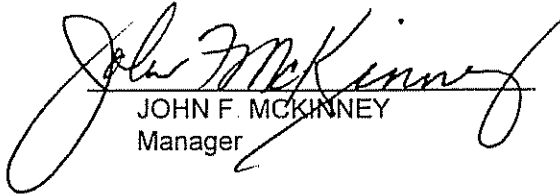
Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007

For: San Tan Office Venture, L.L.C.
c/o J. F. McKinney and Associates, Ltd
130 E. Randolph Dr., Suite 1250
Chicago, IL, 60601

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written

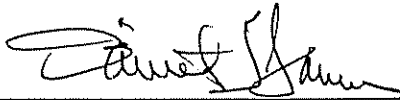
SANTAN OFFICE VENTURE, L.L.C.
Delaware limited liability company

By: J F. McKinney & Associates Ltd ,
an Illinois corporation



JOHN F. MCKINNEY
Manager

STATE OF ARIZONA
Department of Transportation

By: 

DANIEL S. LANCE
Deputy State Engineer

RESOLUTION
OF SAN TAN VENTURE, LLC

San Tan Office Venture, LLC, a Delaware limited liability company, hereby resolves to enter into an agreement with the State of Arizona through its Department of Transportation for construction and payment for access improvements on Ray Road (Project H4527 03C and H4527 K2D). J.F. McKinney & Associates, Ltd. , as manager of the company, shall have the authority to execute and deliver all contracts and documents and take such other steps or actions as it deems necessary to effect the intent of this Resolution.

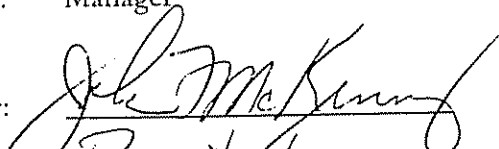
This Resolution shall be deemed effective as of November 18, 1999.

San Tan Office Venture, LLC, a
Delaware limited liability company

By: J.F. McKinney & Associates, Ltd,
an Illinois corporation
Its: Manager

By:

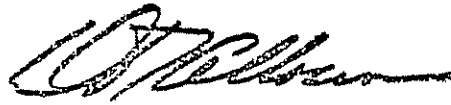
Its:


President

RESOLUTION

BE IT RESOLVED on this 5th day of November 1999, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the San Tan Office Venture, L.L.C. for the purpose of defining responsibilities for the design, construction modification and maintenance of access improvements to commercial property located at Ray Road, incident to the construction of the Price Freeway.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution.



DAVID R. ALLOCCO, P.E.
Assistant State Engineer
Engineering Technical Group

for MARY E. PETERS, Director